

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELISHA TILLMAN, II,

Defendant-Appellant.

UNPUBLISHED
November 22, 2011

No. 302169
Saginaw Circuit Court
LC No. 10-033662-FH

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by delayed leave granted from an order denying his motion to suppress evidence. We affirm.

Defendant is currently awaiting trial for multiple, drug-related offenses that arose out of the execution of a search warrant at 2512 Lynnwood in Saginaw, Michigan. This residence was identified along with five others during a criminal investigation into the distribution of heroin and cocaine in the Saginaw area. Six principal suspects were identified in the supporting affidavit. On appeal, defendant contends that the trial court erred by denying his motion to suppress because the search warrant lacked probable cause. We review the court's factual findings for clear error, and the ultimate decision on the motion de novo. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003).

The search warrant identified six locations that were to be searched, which is permissible, as long as probable cause is established for each location. *People v Cyr*, 113 Mich App 213, 227; 317 NW2d 857 (1982). Probable cause for the issuance of a search warrant exists if there is a substantial basis for inferring a fair probability that contraband or evidence of a crime exists in the location to be searched. *People v Unger*, 278 Mich App 210, 244; 749 NW2d 272 (2008). When reviewing the magistrate's decision to issue a search warrant, the search warrant and affidavit must be reviewed in a common sense and realistic manner. *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). The totality of the circumstances must be considered when determining whether a reasonably cautious person could have concluded that there was a substantial basis for the magistrate's finding of probable cause. *Id.* at 603.

Defendant argues that there was no probable cause since drug activity was never directly observed at the Lynnwood address. According to the affiant, on the same day that the police received an anonymous tip that illicit drug activity was ongoing at the Lynnwood address, a

vehicle registered at the Lynnwood address was observed at 2316 Glenwood, another location under surveillance. Two persons drove the vehicle from the Glenwood residence to a third suspected drug house, which they entered briefly before returning to the Glenwood residence. The vehicle was observed at the Glenwood residence again the next day. Thus, even ignoring the information from the anonymous tip, a person of reasonable caution could conclude that the vehicle was related to the illegal drug enterprise and that there would be additional contraband at the Lynnwood residence.

Defendant also argues that the warrant was stale since too much time had elapsed between the only known drug purchase described in the affidavit and the issuance of the warrant. However, our Supreme Court has noted that “‘staleness’ is not a separate doctrine in probable cause to search analysis. It is merely an aspect of the [overall] inquiry.” *Id.* at 605. The measure of the staleness of information in support of a search warrant rests on the totality of the circumstances, where one of those circumstances is time. *Id.* In determining whether information is stale, we consider factors such as “whether the crime is a single instance or an ongoing pattern of protracted violations [and] whether the inherent nature of a scheme suggests that it is probably continuing.” *Id.*

In support of his position, defendant relies on cases where too much time had elapsed after a single instance of criminal activity was observed. In *People v Siemieniec*, 368 Mich 405, 407; 118 NW2d 430 (1962), the Court determined that the search warrant should not have been granted when there was no evidence that the defendant was continuing to sell illegal beverages four days later. Similarly in *People v David*, 119 Mich App 289, 296; 326 NW2d 485 (1982), “the affidavit alleged only a single sale, not continuing drug sales,” so the information was determined to be stale when it was used to support a search warrant three days later. In both cases, the affidavits alleged a single instance of illegal activity, which is distinguishable from the present case.

Here, the affidavit showed how the illegal activity was much more than a single sale and had been ongoing for some time. Two of the principals were arrested in April 2008 for drug trafficking after a search warrant was executed at one of the six addresses included in the current search warrant. Two days before the search warrant was issued in February 2009, the affiant received information that these principals were still involved in the drug enterprise. One of these principals was connected with the suspected drug that was under surveillance when the vehicle registered to 2512 Lynnwood was observed. This shows that the drug enterprise was ongoing and why it would be reasonable to conclude that evidence could still be found in any of the related addresses, including the Lynnwood residence. Therefore, the warrant was not stale.

Next, defendant challenges the validity of the search warrant because it did not list the items to be seized with sufficient particularity. We disagree. “A search warrant must describe with particularity the place to be searched and the persons or things to be seized.” *People v Martin*, 271 Mich App 280, 303; 721 NW2d 815 (2006). “The purpose of the particularity requirement in the description of items to be seized is to provide reasonable guidance to the executing officers and to prevent their exercise of undirected discretion in determining what is subject to seizure.” *Id.* at 304 (internal quotations omitted). Here, the listed items were indeed numerous, but they were not of an open-ended or vague type that would run afoul of constitutional protections. Defendant does not explain how any of the listed items were not

specific enough – instead defendant seems to rely on the fact that they were too numerous. Accordingly, this argument fails. Moreover, the search warrant included items ranging from controlled substances to financial records, which under the circumstances, was sufficient to protect against the exercise of “undirected discretion” by the police.

Finally, we do not need to consider whether the good-faith exception to the exclusionary rule applies because the search warrant was valid.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Christopher M. Murray